

**STATE OF MAINE**

**DEPARTMENT OF MARINE RESOURCES**

<b>IN THE MATTER OF THE APPLICATION OF</b>	)	
<b>RALPH JACOBS AND TIM KIEF FOR A LIMITED-</b>	)	<b>FINDINGS OF FACT,</b>
<b>PURPOSE AQUACULTURE LEASE LOCATED IN</b>	)	<b>CONCLUSIONS OF</b>
<b>LAW</b>		
<b>EASTERN BAY, LAMOINE, HANCOCK COUNTY, MAINE)</b>		<b>AND DECISION</b>

On June 5, 2000, Ralph Jacobs of Milbridge and Tim Kief of Hancock, Maine, applied for a limited-purpose aquaculture lease totaling 1.71 acres of coastal waters of the State of Maine, located in Eastern Bay, Lamoine, Hancock County, Maine. The applicant requested the lease for a term of three years for the purpose of cultivating blue mussels (Mytilus edulis) using suspended culture techniques.

Approval of limited-purpose aquaculture leases is governed by 12 M.R.S.A. §6072-A. This statute provides that the Commissioner of the Department of Marine Resources (DMR) may grant a lease if he determines that the project will not unreasonably interfere with the ingress and egress of riparian owners, navigation, fishing or other uses of the area; the ability of the site and surrounding areas to support ecologically significant flora and fauna; or the use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities. The Commissioner must also determine that the applicant has demonstrated that there is an available source of organisms to be cultured for the lease site.

As provided for in 12 M.R.S.A. §6072-A(6), the Commissioner is not required to hold a public hearing on this application unless a hearing is requested in writing by five (5) or more interested parties. Notice of the application was published in the July 6, 2000 issue of the *Ellsworth American* newspaper. No written comments or requests for a hearing were received during the comment period established in 12 M.R.S.A. §6072-A(5).

**Evidence Concerning the Nature and**  
**Impact of the Proposed Lease**

12 M.R.S.A. §6072-A(8) and the Department's regulations, Chapter 2.64(2), require the applicant to provide an application for a limited-purpose (experimental) aquaculture lease. This proposed experimental lease is sought to conduct commercial research and development on different techniques for growing blue mussels. The applicant requests the maximum lease term of three (3) years and 2.0 acres of coastal waters, having the approximate dimensions of 135' by 600'. The proposed lease is located approximately one mile due east-northeast of Googins Ledge in Eastern Bay Lamoine, Hancock County, Maine. The applicant requests authority to grow blue mussels using suspended culture techniques.

The operation would include the use of up to three 40 ft<sup>2</sup> rafts made of three 3' x 40' wide pontoons held together by five 40' lengths of galvanized steel I-beams. There would be eighty (80) 3"x4" wooden cross beams, each measuring 22' x 46' long, supported by the steel I-beams. Thirty-five (35) foot length blue mussels drop lines would be suspended from the 80 wooden cross beams, with a maximum of 450-drop lines, suspended from each raft. The three 40 ft<sup>2</sup> rafts would be connected in tandem by five sections of 15 feet of 1" chain or rope between each raft. The outermost four corners of the rafts would be connected to 3-4 ton granite mooring blocks or 1500 pound steel anchors using f 1" chain and 1 ½" polysteel line at a 3:1 scope for the water depth. A 30' deep 4"-6" mesh predator net would be hung around the perimeter of each raft to deter diving ducks from eating the mussels.

Individual drop lines are composed of a biodegradable cotton mesh which is mechanically wrapped around a ½" rope to hold the seed blue mussels in place. Six-inch plastic pegs are placed in the rope every foot to hold the mesh and blue mussels in place. Seed blue mussels obtained from Maine sources, or collected from the same drop lines, would be attached to these lines at the approximate density of 120-400 per foot. Grow-out of the mussels would

take 12 months and would be mechanically harvested. During harvest the mussels would be washed, separated and graded at the same time. A 40-ft<sup>2</sup> raft would take approximately 5 days to harvest and therefore three rafts would take 15 days to harvest annually.

The application describes the bottom composition to be soft sandy mud with a gentle slope for the topography. Local fauna was described as rare and included one specimen each of a scallop, sea cucumber, starfish, brittle star and an orange sponge. No flora was reported. The specimens were collected by a 6' drag towed approximately 500' three times within the proposed site. The area is subtidal, with a depth range of 70' – 80' at mean low water. Tidal currents are stated to have a maximum of approximately 25cm per second with an average of 9.2cm per second. The primary direction of flow was due east and west for the respective ebb and flood tides.

The application indicated that the proposed lease site has very limited lobster fishing and scallop dragging activity due to the soft mud bottom. The proposed lease site is located over 1000' from the shore on either side of Eastern Bay. According to a letter provided by the Division II Marine Patrol Lieutenant, there is lobster fishing and boating activity in the area.

According to the Department's Aquaculture Environmental Coordinator's (AEC) report the 135' x 600' proposed lease dimensions described in the application has a corrected acreage of 1.71 acres. During a site visit on September 9, 2000 no lobster fishing was observed within the proposed lease boundaries. Three trap buoys were observed south of the proposed lease. Approximately 300-500 trap buoys were estimated to the north of the proposed lease that were observed almost to the shore of Lamoine and located in an east-west direction for an estimated 1-mile distance. No recreational fishing or other activities were observed.

The AEC estimated that the distance between the northwest corner of the proposed lease to Lamoine State Park and Beach area is approximately 3,471' due west-northwest. The Trenton public boat ramp is located slightly over 4 miles due west. No public facilities are located within 1,000' of the proposed lease.

### **Findings of Fact**

The proposed lease site is located in water depths ranging from 70' to 80' at mean low water approximately 1-mile due east-northeast of Googins Ledge in Eastern Bay, Lamoine. The proposed lease is approximately 3,471' due east-southeast of Lamoine Beach and well over 1,000 from the nearest shore. Access to the proposed lease would be gained from the Trenton public boat landing. This was confirmed in a site visit to the area by the AEC on September 9, 2000. Based on the evidence that the applicant does not request or require riparian access, that there is available public access and based on the maps and charts that there is ample room to access the shore between the proposed lease and nearest shoreline, I find that the lease will not unreasonably interfere with the ingress and egress of riparian owners.

According to the local Marine Patrol Lieutenant there is boating activity and lobster fishing in the area. According to the application boats generally navigate north or south of the proposed lease to pass Googins Ledge approximately due west of the site. According to the AEC no recreational fishing or other activities were observed. No lobster trap buoys were observed within the proposed lease boundaries and lobster fishing was primarily located north and east of the proposed lease. This was confirmed in a site visit to the area by the AEC on September 9, 2000. Based on the evidence and the previous finding, which describes ample room to navigate within Eastern Harbor, I find that the lease will not unreasonably interfere with navigation in the area.

According to Department records there are no existing aquaculture leases within the vicinity of the proposed lease or in Eastern or Frenchman's Bays. The waters of the area are classified as open for the harvest of shellfish according to the Department's Water Quality Program. The application indicates that recreational activities are limited or non-existent on this site. The primary commercial activity in the vicinity is lobster fishing, which is concentrated north and east of the proposed site. This was confirmed in a site visit to the area by the AEC on September 9, 2000. Based on the evidence that there is limited commercial or recreational

fishing activities within the proposed lease boundaries and immediate area south and west, and no other aquaculture leases in the area, I find that the lease will not unreasonably interfere with fishing, aquaculture leases, or other uses of the area.

Blue mussels would be obtained from local waters on collecting ropes suspended from the proposed rafts or from other sources within Maine. The proposed activities include only the collecting and rearing of blue mussels on drop lines suspended from rafts. Bottom planting of wild seed blue mussels is not requested. No information in the record indicated that the proposed activities would cause any interference with the local flora or fauna. Based on this evidence, I find that the proposed activities will not unreasonably interfere with the ability of the site and surrounding areas to support existing ecologically significant flora and fauna.

The application indicated that blue mussel seed would be obtained from Maine sources or from the proposed lease. Based on this evidence, I find that there is an available source of blue mussels.

According to the AEC the applicant would access the proposed lease from the Trenton public boat ramp located approximately 4 miles due west of the site. The nearest shore is well in excess of 1,000' from the proposed lease boundaries according to the maps and charts in the record. The nearest state park and beach is Lamoine Beach and State Park located due west-northwest approximately 3,471' from the proposed lease. This was confirmed in a site visit to the area by the AEC on September 9, 2000. Based on the evidence, maps and charts that the proposed lease is not within 1,000' of the Lamoine State Park and Beach and no access was requested from those facilities, I find that the proposed lease activities will not unreasonably interfere with public use or enjoyment of a state-owned ferry dock within 1,000', and that the lease site is not located within 1,000' of any municipally or federally owned beaches, parks, or docking facilities.

### **Conclusions of Law**

Based on the above findings, I conclude that:

1. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner;
2. The aquaculture activities proposed for this site will not unreasonably interfere with navigation;
3. The aquaculture lease activities proposed for this site will not unreasonably interfere with fishing or other uses of the area, taking into consideration the number and density of aquaculture leases in the area;
4. The aquaculture lease activities proposed for this site will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna;
5. The applicant has demonstrated that there is an available source of blue mussels; and
6. The aquaculture lease activities proposed for this site will not unreasonably interfere with public use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities.

The evidence in the record supports a finding that the proposed aquaculture activities meet the requirements for the granting of an aquaculture lease set forth in 12 M.R.S.A. §6072-A.

### **Decision**

Based on the foregoing, the Commissioner grants the requested limited-purpose-commercial lease of one 1.71 acres to the applicant for a period of three (3) years from the date of this decision for the purposes of cultivating blue mussels using three tandem 40 ft<sup>2</sup> rafts in a system for suspended cultivation techniques. The applicant shall pay the State of Maine rent in the amount of \$50 per acre per year. The applicant shall post a bond or establish an escrow account in the amount of \$5,000, conditioned upon its performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations. A limited-purpose lease for commercial aquaculture research and development conveys only those rights specified in the lease.

### **Conditions to be Imposed on Lease**

The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities. Conditions are designed to encourage the greatest multiple, compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the aquaculture law.

The following conditions are placed on this lease:

1. navigation, recreational fishing, lobster and crab fishing, are allowed on the open areas of the lease; and
2. the lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources regulations, Chapter 2.80.

The Commissioner may commence revocation procedures if he determines that substantial aquaculture has not been conducted within the preceding year or that the lease activities are substantially injurious to marine organisms. If any of the conditions or requirements imposed in this decision, in the lease, or in the law are not being observed, the Commissioner may revoke the aquaculture lease.

**Dated:** \_\_\_\_\_

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**George D. Lapointe (Commissioner)**  
**Department of Marine Resources**